



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable W. J. Townsend
County Attorney
Angelina County
Lufkin, Texas

Dear Sir:

Opinion No. 0-5959

Re: Authority of a constable on
a salary basis to retain fees
earned by him in civil suits
in which the county and state
are not parties thereto.

We are in receipt of your letter of recent date
requesting an opinion from this department on the above
subject matter. Your letter is as follows:

"I beg leave to advise that the County
Commissioners' Court has fixed the salary
of the constable of Precinct No. One at a
fixed sum without any order as to disposi-
tion of his fees earned by him.

"May the constable retain the fees earned
by him in civil cases, in which the county
and state are not a party thereto?"

Section 2 of Article 3912e, Vernon's Annotated
Civil Statutes, provides in part as follows:

"The Commissioners' Court of each county in
the State of Texas, at its first regular meet-
ing in January of each calendar year, shall,
by order made and entered in the minutes of said
court, determine whether precinct officers of
such county (except public weighers and regis-
trars of vital statistics) shall be compensated
on a salary basis as provided for in this Act,

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or whether they shall receive as their compensation, such fees of office as may be earned by them in the performance of the duties of their offices,
* * *

Sec. 3 of Art. 3912e, V. A. C. S., is as follows:

"In all cases where the Commissioners' Court shall have determined that county officers or precinct officers in such county shall be compensated for their services by the payment of an annual salary, neither the State of Texas nor any county shall be charged with or pay to any of the officers so compensated, any fee or commission for the performance of any or all of the duties of their offices but such officers shall receive said salary in lieu of all other fees, commissions or compensation which they would otherwise be authorized to retain; provided, however, that the assessor and collector of taxes shall continue to collect and retain for the benefit of the Officers' salary Fund or funds hereinafter provided for all fees and commissions which he is authorized under law to collect; and it shall be his duty to account for and to pay all such monies received by him into the fund created and provided for under the provisions of this Act; provided further, that the provisions of this Section shall not affect the payment of costs in civil cases by the State but all such costs so paid shall be accounted for by the officers collecting the same, as they are required under the provisions of this Act to account for fees, commissions and costs collected from private parties." (Underscoring ours)

Sec. 3 of Art. 3912e, supra, prohibits the State or County from paying any fee to officers compensated on a salary basis and states that the salary of such officer shall be in lieu of all fees, commissions or compensation which they would otherwise be authorized to retain.

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Sec. 4 of said article states that in counties containing a population of less than one hundred and ninety thousand (190,000) inhabitants wherein the county or precinct officers are compensated on a salary basis, there shall be created a fund to be known as the Officers' Salary Fund."

Sec. 5 provides:

"It shall be the duty of all officers to charge and collect in the manner authorized by law all fees and commissions which are permitted by law to be assessed and collected for all official service performed by them. As and when such fees are collected they shall be deposited in the Officers' Salary Fund, or funds provided in this Act."

We therefore answer your question in the negative.

Yours very truly,

APPROVED DEC 7 1945

ATTORNEY GENERAL OF TEXAS

Ernest Rell
ATTORNEY GENERAL OF TEXAS

By

J. C. Davis, Jr.
J. C. Davis, Jr.
Assistant

JR:LJ

By

John Reeves
John Reeves

